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In The

Supreme Court of the United States

October Term, 1984

No.

DAVID A. GARRAGHTY, Warden, *et al.*,
Petitioners,

v.

LEMUEL HUBERT HINTON,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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QUESTION PRESENTED

Does A Complaint Under 42 U.S.C. § 1983 Which Merely Alleges An Isolated And Unauthorized Attack By Prison Guards Upon An Inmate State A Claim Of Cruel And Unusual Punishment Under The Eighth Amendment?

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42 U.S.C. § 1983 .....*passim*

APPLICABLE PROVISIONS OF LAW

VIII AMENDMENT TO THE CONSTITUTION

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

XIV AMENDMENT TO THE CONSTITUTION

Section 1 (in pertinent part)

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. § 1983 (in pertinent part)

§ 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

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PETITION FOR WRIT OF CERTIORARI TO THE JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

OPINIONS BELOW

The opinion of the United States District Court is unreported and is included herein as Appendix A.[1] The opinion of the Court of Appeals for which review is sought is unreported and is included as Appendix B.

---

[1] Petitioners herein (defendants below) are employees of the Brunswick Correctional Center, a state prison operated by the Virginia Department of Corrections. David A. Garraghty is the warden of the prison, and Sam L. Batts and Stephen T. Sawyer are members of the security staff, holding the ranks of captain and corporal, respectively. Dale Pinchback is the chairman of the prison disciplinary committee. For purposes of this petition, only the actions of the petitioners Batts and Sawyer are relevant, as only they are implicated in the alleged assault upon respondent. Respondent is Lemuel Hubert Hinton, an inmate confined to the Brunswick Correctional Center for conviction of a felony.

JURISDICTION

The judgment of the United States Court of Appeals for the Fourth Circuit was entered on August 6, 1984. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

On April 5, 1983, respondent Hinton, an inmate confined at the Brunswick Correctional Center within the Virginia Department of Corrections, complained to a captain of the security force about regulations at that prison. The respondent described the events during this incident (as relevant to this petition)[2] in his *pro se* petition filed under 42 U.S.C. § 1983 as follows:

> While said dispute was in progress Cpl. Sawyer came up behind the plaintiff and bumped into plaintiff and stepped on plaintiff's heels and stated to Plaintiff, 'don't talk to my captain like that.' Plaintiff continued to talk to Captain Batts and Corporal Sawyer started to step on Plaintiff's heals (sic) and bumped into Plaintiff again and when Plaintiff turned around to face Corporal Sawyer, Captain Bates grabbed plaintiff from behind and began to choke him. At which time Captain Batts told Sawyer to grab his legs. At this time Plaintiff dropped his papers and book and tried to break from the choke that was being applied by Captain Batts and plaintiff couldn't receive any air. Corporal Sawyer grabbed Plaintiff's leg and started to twist his ankle and Plaintiff requested for them to stop and tried to break free and did get his ankle away from Corporal Sawyer and once Plaintiff got his ankle aloose (sic), Captain Batts began to choke the plaintiff tighter and Corporal Sawyer begun (sic) to hit Plaintiff in the

[2] Two other unrelated claims were dismissed by the district court and that dismissal was affirmed by the court of appeals. Those claims are not relevant to this petition.

> midsection with his radio and grabbed plaintiff's arms and began to twist them and at that time Captain Batts informed Plaintiff that he was going to the basement of "B" Building.

Respondent alleges that this conduct violated his constitutional rights.

By order of February 29, 1984, the district court, finding that respondent did not allege that petitioners intended to infringe upon any of respondent's specific constitutional rights, granted petitioners' motion for summary judgment. Respondent appealed the dismissal to the court of appeals.

By order of August 6, 1984, the court of appeals held that the district court erred in granting summary judgment for petitioners. Citing its earlier precedent in *King* v. *Blankenship*, 636 F.2d 70 (4th Cir. 1980), the Fourth Circuit stated that a prisoner is protected under the Eighth Amendment from an unjustified striking, beating or infliction of bodily harm. Accordingly, the court vacated the dismissal of this claim and remanded the matter for a determination whether the use of force against respondent amounted to cruel and unusual punishment.

ARGUMENT FOR GRANTING WRIT OF CERTIORARI

I.

There Are Irreconcilable Conflicts Among The Circuit Courts In Interpreting The Constitutional Significance Of Custodial Assaults.

This Court granted certiorari in *Parratt* v. *Taylor*, 449 U.S. 917 (1980), in order to resolve the confusion and diversity of views among the federal courts of appeals in analyzing inmate claims for property losses couched in terms of constitutional violations. Similar confusion and

diversity of views exist among the courts of appeals with respect to inmate allegations of excessive physical force by their custodians. Routinely, such complaints are filed in the federal courts, characterizing custodial assaults as violating the Eighth Amendment and therefore cognizable under 42 U.S.C. § 1983.

One circuit has specifically ruled that an isolated and spontaneous beating of an inmate by custodians does not state a claim of cruel and unusual punishment under the Eighth Amendment. *George* v. *Evans,* 633 F.2d 413 (5th Cir. 1980). Another holds that such claims do not implicate any federal right giving rise to a § 1983 claim. *Cole* v. *Smith,* 344 F.2d 721 (8th Cir. 1965). While some of the other circuits, as discussed below, have found such allegations to state a claim under the Eighth Amendment, there is no consensus as to what proof is necessary to sustain a claim.

The Fourth Circuit's standard for review requires only that the inmate prove that he was the victim of an "unjustified striking, beating or infliction of bodily harm" at the hands of one acting under the color of state law. *King* v. *Blankenship,* 636 F.2d 70, 72 (4th Cir. 1980). The Tenth Circuit requires a plaintiff to prove (1) that a prison guard's assault was wanton (the guard intended to harm the inmate); (2) that the force was unnecessary to maintain or restore discipline; and (3) that the use of force resulted in either severe pain or lasting injury. *Sampley* v. *Reuttgers,* 704 F.2d 491 (10th Cir. 1983).

Other circuits have ruled, without articulating a discernible standard, that physical beatings in a custodial setting may violate the Eighth Amendment's proscription against cruel and unusual punishment. *See United States* v. *Georvassilis,* 498 F.2d 883 (6th Cir. 1974), and *Furtado* v.

Bishop, 604 F.2d 80 (1st Cir. 1979) (suggestion in dictum that the appropriate standard is whether the assault is "shocking to the conscience").

One of the most cited decisions concerning the constitutional significance of a custodial beating is *Johnson* v. *Glick*, 481 F.2d 1028 (2nd Cir.), *cert. denied*, 414 U.S. 1033 (1973), wherein the Second Circuit Court of Appeals ruled that a pretrial detainee's complaint alleging an assault by a guard must be analyzed in terms of the due process clause without reference to any "specifics" of the Bill of Rights. In so ruling, the court suggested in dictum than a spontaneous and unauthorized attack upon an inmate by a guard does not constitute cruel and unusual punishment. *Johnson* at 1032. This dictum is significant in its recognition of the limitations of the Eighth Amendment in terms of a feedral court's review of a custodial attack.

The due process analysis of *Johnson* has been used by other circuits as a basis for accepting jurisdiction of claims involving custodial assaults under 42 U.S.C. § 1983, thereby avoiding the Eighth Amendment question. *Polite* v. *Diehl*, 507 F.2d 119 (3rd Cir. 1974); *Meredith* v. *Arizona*, 523 F.2d 481 (9th Cir. 1975) (freedom from assault is "an aspect of the right to liberty," *Meredith* at 482). The continuing validity of the Fourteenth Amendment due process analysis as developed in *Johnson* is questionable, however, in light of this Court's rulings in *Parratt* v. *Taylor*, 451 U.S. 527 (1981), and *Palmer* v. *Hudson*, 52 U.S.L.W. 5052 (1984). In those rulings, respectively, this Court held that neither the negligent nor intentional loss of an inmate's personal property by prison officials states a claim under the due process clause of the Fourteenth Amendment if the state provides the inmate with an adequate means of redress.

At least one circuit has interpreted *Parratt* as severely

limiting the due process theory for reviewing allegations of assaults brought under § 1983. In *Rutledge* v. *Arizona Board of Regents*, 660 F.2d 1345 (9th Cir. 1981), the court held that *Parratt* restricts the review of any Fourteenth Amendment claim brought under § 1983 involving an assault to a determination of whether the victim has adequate remedies under state law. Finding adequate state remedies available, the *Rutledge* court found no deprivation of liberty without due process of law and, accordingly, dismissed the Fourteenth Amendment claim. The practical effect of such ruling is that those circuits which have used a "due process" analysis for custodial assaults under § 1983 may now be forced to review them solely in terms of the Eighth Amendment.

Judicial confusion in the disposition of inmate claims of physical abuse has been recognized by the district courts, some of which have expressed their frustrations in reported cases. *See Dandridge* v. *Police Department of the City of Richmond*, 566 F.Supp. 152 (E.D. Va. 1983) and *Schiller* v. *Strangis*, 540 F.Supp. 605 (D. Mass. 1982). That confusion is also reflected in dissenting opinions issued at the circuit levels [*see* dissents in *Johnson* at 1034; *Polite* at 124 and *Bethea* v. *Crouse*, 417 F.2d 504 at 510 (10th Cir. 1969)]; and in conflicting opinions issued by the same circuit courts. *Compare George* with *Tolbert* v. *Bragan*, 451 F.2d 1020 (5th Cir. 1971), and *Cole* with *Jackson* v. *Bishop*, 404 F.2d 517 (8th Cir. 1968). Without this Court's guidance by which to evaluate these claims, the lower courts will continue to reach inconsistent results.

II.

An Isolated And Unauthorized Attack Upon An Inmate By A State Employee Does Not Constitute Cruel And Unusual Punishment Under The Eighth Amendment

Respondent alleges herein that during the course of a "verbal dispute" between him and two security officers, he was choked, manhandled and hit in "the mid-section" before being placed in detention. His claim that such conduct constituted cruel and unusual punishment under the Eighth Amendment was dismissed by the district court in a ruling which was subsequently reversed by the Fourth Circuit Court of Appeals. The Fourth Circuit's reversal was premised on its earlier precedent in *King*, which announced the following rule in reviewing Eighth Amendment claims involving inmate allegations of physical abuse by custodians:

> Lest there be doubt as to the rule in this circuit, we specifically hold that the unjustified striking, beating, or infliction of b dily harm upon a prisoner gives rise to liability under 42 U.S.C. § 1983 on the part of one who, acting under color of state law, engages in such conduct without just cause. 636 F.2d at 72.

While the *King* ruling suggests factors which should be considered in determining whether the use of force is constitutionally permissible, it only requires a finding of unjustified force to support an award of damages. It is submitted that this rule of law is simply incorrect, as it stretches the Eighth Amendment beyond its intended scope.

This Court has never interpreted the Eighth Amendment as a panacea for all complaints of physical abuse by inmates against their keepers. The original intent of the Eighth Amendment was to "proscribe 'torture[s]' and other 'barbar[ous]' methods of punishment." *Estelle* v. *Gamble*, 429 U.S. 97 (1976) at 102 (quoting from Granucci, *Nor Cruel*

And Unusual Punishment Inflicted: The Original Meaning, 57 Calif. L. Rev. 839 (1969) at 482). While recent decisions of this Court have held that the Eighth Amendment extends protection to state inmates against the wanton and unnecessary infliction of pain [*see Estelle* and *Rhodes* v. *Chapman*, 452 U.S. 337 (1981)], the Court has also held that the Amendment does not provide a forum for the adjudication of simple torts such as medical malpractice. *Estelle* at 107.

Under the *King* standard, an inmate's claim that a correctional officer used excessive force against him will require a federal judge to preside over what would be a simple assault claim cognizable in a small claims court except for the fact that the defendant happens to be employed by the state. Whether the Eighth Amendment has been violated may depend upon whether a gratuitous shove or punch by an officer inflicted "severe" as opposed to "moderate" pain. To permit such trivialization of constitutional principles is not only contrary to precedents such as *Rhodes* and *Estelle*, but it ignores the basic premise of the Eighth Amendment: to protect individuals convicted of crimes against cruelty imposed or sanctioned by the government as punishment, as opposed to the random and unauthorized act of a state employee.

This Court has consistently held that § 1983 should be restricted to remedying specific and narrowly defined constitutional wrongs. In *Screws* v. *United States*, 325 U.S. 91 (1945), the Court reversed a conviction under the criminal counterpart to § 1983 of two officers for their fatal beating of a suspect in the course of an arrest. That reversal was due to the failure of the trial court to instruct the jury that they must find defendants guilty of the specific intent to deprive their victim of an established constitutional right. The Court stressed the limited scope of the civil rights statutes:

> [The statute] should be construed so as to respect the proper balance between the States and the federal government in law enforcement. Violation of local law does not necessarily mean that federal rights have been invaded. The fact that a prisoner is assaulted, injured, or even murdered by State officials does not necessarily mean that he is deprived of any right protected or secured by the Constitution or laws of the United States. 325 U.S. at 108-109.

This dictum was cited with favor by this Court in its decision in *Paul* v. *Davis,* 424 U.S. 693 at 700 (1976).

This Court has repeatedly reversed lower courts' awards under 42 U.S.C. § 1983 for claims which, although pled as constitutional violations, are no more than simple tort claims which should be addressed in state courts. *See Paul* v. *Davis,* 424 U.S. 693 (1976) (police dissemination of false information concerning an individual's criminal record, while perhaps defamatory, is of no constitutional significance); *Baker* v. *McCollan,* 443 U.S. 137 (1979) (wrongful arrest and detention pursuant to a facially valid warrant does not violate the due process clause). *See also Parratt* and *Palmer,* wherein the Court ruled that neither the negligent nor intentional taking of an inmate's property by a state employee violated the due process clause where there was an adequate remedy under state law. While these decisions are primarily concerned with interpreting the Fourteenth Amendment, they also evidence the Court's view that the Constitution does not provide remedies for every tort committed by a state employee. As stated in *Baker:*

> Section 1983 imposes liability for violations of rights protected by the Constitution, not for violations of duties of care arising out of tort law. Remedy for the latter type of injury must be sought in state court under

> traditional tort-law principles. Just as '[m]edical malpractice does not become a constitutional violation merely because the victim is a prisoner [citing *Estelle, supra*], false imprisonment does not become a violation of the Fourteenth Amendment merely because the defendant is a state official. 443 U.S. at 146.

Estelle, which does involve the Eighth Amendment, holds medical malpractice, a simple tort, is not within the proscription of the Eighth Amendment. A simple assault which is not authorized or condoned by high prison officials is no more worthy of constitutional review than are defamation, false imprisonment or medical malpractice.

The number of civil rights suits filed by state prisoners against their custodians has increased dramatically over the last 15 years. For the year ending June 30, 1970, there were 2,030 civil rights petitions filed by state prisoners; that number had increased to 18,477 by 1983. *See* 1983 *Annual Report Of The Director Of The Administrative Office Of The United States Courts.* The number of such cases, coupled with the newly recognized limitations upon the "due process" theory as a means of evaluating custodial assault cases, underscores the importance of a consistent and logical interpretation of the Eighth Amendment with respect to such claims.

Petitioners submit that the appropriate standard for judicial review in applying the Eighth Amendment to inmate complaints of physical brutality is that suggested by the ruling in *George* and the dictum in *Johnson.* Only if an inmate's allegations suggest that the use of unjustified force against him has been authorized or countenanced by prison administrators as a means of state imposed punishment should it be viewed as stating a cognizable § 1983 claim. Such an analytical model would avoid equating simple (and private) assaults with those wrongs which are "cruel and

unusual punishment." More importantly, it would be responsive to the concerns underlying the Eighth Amendment.

The Eighth Amendment has been interpreted consistently by this Court as providing a check upon governmental excesses in punishing those convicted of criminal offenses. *See generally Gregg* v. *Georgia,* 428 U.S. 153 (1976). In reviewing Eighth Amendment precedents involving physical abuse, the Second Circuit Court of Appeals in *Johnson* stated the following:

> The thread common to all these cases is that 'punishment' has been deliberately administered for a penal or disciplinary purpose, with the apparent authorization of high prison officials charged by the state with responsibility for care, control, and discipline of prisoners. In contrast, although a spontaneous attack by a guard is 'cruel' and, we hope, 'unusual,' it does not fit any ordinary concept of 'punishment.' 481 F.2d at 1032.

To permit the *Hinton* rule to prevail over that suggested by the *Johnson* dictum would force federal trial courts to adjudicate purely personal disputes between inmates and their custodians. Moreover, it will contribute to the continued "log-jamming" of the federal courts by inmate complaints that should be resolved in state courts.

The suggested test is consistent with Supreme Court precedent in reviewing Eighth Amendment challenges to conditions in state prisons. In *Estelle,* as pointed out by Justice Stevens' dissent, the inmate was not simply alleging that he was wronged by an individual in obtaining medical care, but his complaint "represents a crude attempt to challenge the system of administering medical care in the prison where Gamble is confined." 429 U.S. 97 at 109. The Court in *Estelle* was concerned not with a private dispute or tort,

but with the obligations of the government (as represented by the medical director of the facility and other high prison officials) to provide basic medical services. Similarly, in *Rhodes* the Court's concern was with the general pervasive conditions of a prison as operated by government affecting all inmates confined therein.

To extend the Eighth Amendment to include spontaneous and unauthorized assaults would ignore standing precedent of this Court and would trivialize the cruel and unusual punishment clause of the Eighth Amendment. Accordingly, the *Hinton* rule should be reversed.

CONCLUSION

For the reasons stated above, petitioners respectfully pray that the Court will grant their Petition for a Writ of Certiorari, and reverse the judgment of the Fourth Circuit Court of Appeals.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Guy W. Horsley, Jr., Assistant Attorney General of Virginia, of counsel for petitioners, and a member of the Bar of the Supreme Court of the United States, do hereby certify that on the 1st day of November, 1984, I mailed 3 copies of the foregoing Petition for Writ of Certiorari to Lemuel Hubert Hinton, #127419, respondent herein, Brunswick Correctional Center, Post Office Box 429, Lawrenceville, VA 23868.

GUY W. HORSLEY, JR.
Assistant Attorney General

APPENDIX

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

Civil Action No. 83-0654-R

LEMUEL HUBERT HINTON

V.

DAVID A. GARRAGHTY, WARDEN, et al

JUDGMENT

For the reasons set forth in the accompanying opinion, it is hereby ORDERED that judgment is ENTERED for the defendants.

D. DORTCH WARRINER
United States District Judge

Date: 29 February 1984

App. 2

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

Civil Action No. 83-0654-R

LEMUEL HUBERT HINTON

---

v.

DAVID A. GARRAGHTY, WARDEN, et al

OPINION

Plaintiff, proceeding *pro se* and *in forma pauperis,* filed this complaint pursuant to 42 U.S.C. § 1983 on 27 October 1983. On 18 November defendants filed a motion for summary judgment. On 7 December plaintiff was notified of an opportunity to respond which he did on 28 December. The motion for summary judgment is now ripe for consideration. The Court has jurisdiction under 28 U.S.C. § 1343.

On 30 November plaintiff moved the Court for production of documents. Pursuant to Local Rule 11.1(j), "[t]he Court will not consider any motion concerning discovery matters unless the motion is accompanied by a statement of counsel that a good faith effort has been made between counsel to resolve discovery matters at issue." As plaintiff's motion is not accompanied by such a statement of a good faith effort, his motion is hereby DISMISSED.

Plaintiff's first claim is that he was assaulted and beaten by defendants Batts and Sawyer while confined at Brunswick

Correctional Center. Plaintiff alleges that the defendants initiated an altercation between plaintiff and defendants and then beat and choked plaintiff. Defendants counter that plaintiff assaulted defendant Batts and that they only exerted the amount of force necessary to restrain plaintiff. The "intent to violate a specific constitutional right, or knowledge that the natural consequence of an act will infringe a specific constitutional right, is the proper litmus test for identifying the tort that makes out a constitutional claim." *Dandridge* v. *Police Department of the City of Richmond,* 566 F.Supp. 152, 160 (E.D.Va. 1983). As plaintiff does not allege that defendants intended to infringe upon any specific constitutional right, his claim is without merit and defendants' motion for summary judgment as to this point shall be GRANTED.

Plaintiff's second claim is that he was denied access to an attorney at an Adjustment Committee Hearing. Plaintiff alleges that he requested the services of private counsel at the hearing, that counsel did not arrive prior to the hearing, and that defendants provided no legal advisor in place of plaintiff's absent counsel. Plaintiff was not constitutionally entitled to representation of counsel at the hearing. *Baxter* v. *Palmigiano,* 425 U.S. 308, 314-15; *Wolff* v. *McDonnell,* 418 U.S. 539, 569-70 (1974). While Virginia prison regulations allow an inmate to retain an attorney for a disciplinary hearing, plaintiff was not hindered in calling to arrange for representation. The fact that the attorney contacted was unwilling or unable to travel to Brunswick Correctional Center is not attributable to defendants.

Plaintiff's third claim is that he was denied due process of law in the Adjustment Committee Hearing. Plaintiff cites the fact that the testimony of defendants Batts and Sawyer was conflicting and inconsistent. Complaint at 5-6. As this

Court has previously noted, it "does not sit to review the factual findings of prison disciplinary committees." *Kelly* v. *Cooper*, 502 F.Supp. 1371, 1376 (1980). The only procedural safeguards constitutionally mandated are advanced written notice of the charges, written findings, and generally, the right to call witnesses. *Wolff* v. *McDonnell*, 418 U.S. 539, 563-66 (1974). As plaintiff has failed to allege that any of these procedural safeguards were denied him, this claim is without merit.

Plaintiff's final claim is that he was denied access to a magistrate so that he might bring criminal charges against defendants Batts and Sawyer for their assault upon him. The affidavit of Assistant Warden Pruett indicates that an inmate who wishes to see a magistrate may contact prison officials, who give him the name and address of the magistrate. The inmate then contacts the magistrate and the magistrate determines whether or not it is necessary for him to talk to the inmate. Plaintiff acknowledges that he contacted Assistant Warden Pruett and met with him on 1 June 1983 in regard to the incident concerning defendants Batts and Sawyers. Plaintiff admits that he contacted and "received no redress from the Magistrate Rick Clary." Response to Motion for Summary Judgment at 4. Despite these admissions, plaintiff categorically states that "defendants denied him meaningful access to the Courts." Response to Motion for Summary Judgment at 3. The underlying basis of plaintiff's claim appears to be that the Magistrate failed to issue warrants for the arrest of defendants Batts and Sawyer upon the application of plaintiff. However, plaintiff has failed to show that defendants infringed upon his right of access to communicate with the magistrate or any other court official. Accordingly, his claim is without merit.

As no material issues of fact remain in dispute, defendants' motion for summary judgment shall be GRANTED.

An appropriate order shall issue.

Should plaintiff desire to appeal, written notice of appeal must be filed with the Clerk of the Court within 30 days of the entry hereof.

D. DORTCH WARRINER
United States District Judge

Date: 29 February 1984

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE FOURTH DISTRICT

No. 84-6179

LEMUEL HUBERT HINTON,

Appellant,

v.

DAVID A. GARRAGHTY, Warden; CAPTAIN SAM L. BATTS;
CORPORAL STEPHEN T. SAWYER;
DALE PINCHBACK, Chairman Adjudgment Comm.,

Appellees.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. D. Dortch Warriner, District Judge. (C/A No. 83-0654-R)

Submitted: May 24, 1984 Decided: August 6, 1984

Before RUSSELL and CHAPMAN, Circuit Judges, and HAYNSWORTH, Senior Circuit Judge.

(Lemuel Hubert Hinton, Appellant Pro Se. Richard F. Gorman, III, Assistant Attorney General, for the Appellees.)

PER CURIAM:

Lemuel Hubert Hinton, a Virginia inmate, appeals from the district court's entry of summary judgment in favor of the defendants on his 42 U.S.C. § 1983 complaint. Hinton alleges, in his complaint, that: (1) two of the defendants, Batts and Sawyer, beat and choked him without just cause; (2) he was denied access to an attorney and denied due process at his adjustment committee hearing; and (3) he was denied access to the courts in order to bring assault charges against Batts and Sawyer.

In granting summary judgment for the defendants, the district court found that Hinton's first claim did not state a constitutional violation because there was no allegation that Batts and Sawyer intended, in beating Hinton, to infringe upon his constitutional rights. Excessive use of force, amounting to cruel and unusual punishment, does not, however, depend upon the use of that force to prevent a prisoner from exercising some other constitutional right. Rather, prisoners are protected, under the Eighth Amendment, from unjustified striking, beating, or infliction of bodily harm by one who engages in such conduct without just cause. *King* v. *Blankenship*, 636 F.2d 70, 72 (4th Cir. 1980).

> In determining whether the constitutional line has been crossed, a court must look to such factors as the need for the application of force, the relationship between the need and the amount of force that was used, the extent of injury inflicted, and whether force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm.

King, supra, at 73 (quoting *Johnson* v. *Glick*, 481 F.2d 1028, 1033 (2d Cir. 1973)).

We therefore vacate the district court's dismissal of

Hinton's first claim and remand for a determination of whether the use of force against Hinton amounted to cruel and unusual punishment in light of the above factors. Hinton's appeal from the dismissal of his second and third claims is without merit, and we affirm, on the reasoning of the district court, the judgment of dismissal as to those claims.

Because the dispositive issues recently have been decided authoritatively, we dispense with oral argument. For the reasons above stated, the judgment of the district court is affirmed in part and vacated in part, and the case is remanded.

AFFIRMED IN PART,
VACATED IN PART,
AND REMANDED.